



24th October 2022

For the Attention of: Mr. Brian Gleeson, Chief Executive

Wicklow County Council,
County Buildings,
Whitegates,
Wicklow Town,
County Wicklow
A67 FW96

Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to Issue a Direction to Wicklow County Council on the Wicklow County
Development Plan 2022 - 2028

Dear Brian,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 7th October 2022 in connection with the Wicklow County Development Plan 2022 – 2028, as adopted by the elected members of Wicklow County Council on 12th September 2022, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Wicklow County Council to take certain measures specified in this notice.

On consideration of the recommendation made to me by the Office, I have formed the opinion that:



- (i) Wicklow County Council has failed to implement recommendations made to it, as planning authority, by the Office under section 31AM of the Act;
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (iii) The Plan is inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Eastern and Midlands Regional Spatial and Economic Strategy (RSES);
- (iv) The Plan, as made, is not in compliance with the requirements of the Act.

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons section of the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

PROCESS TO DATE

The Draft Wicklow County Development Plan 2021 – 2027 (the draft Plan) was on public display from 4th June 2021 to 30th August 2021. The Office of the Planning Regulator made a submission to the draft Plan on 30th August 2021, containing eighteen (18) recommendations and nine (9) observations. Recommendations included issues around residential zoning, settlement maps, reviewing the proposed distribution of population and housing in the core strategy, the approach to zoning land for housing in certain settlements, ensuring a greater level of consistency with the Housing Supply Target Methodology for Development Plans Guidelines and a more sustainable level of growth aligned with the NPF. The Office also made recommendations in relation to rural housing. Subsequently, you sent a notice letter under section 12(5)(aa) of the Act (April 2022) to the Office advising of the making of Material Alterations to the Development Plan and specifying the recommendations of the Office not complied with.



The elected members, having considered the draft Plan and your report on submissions received (December 2021), resolved to amend the draft Plan. The material alterations to the draft Plan were on public display from 27th April 2022 to 25th May 2022.

The material alterations included a number of changes including:

- a series of individual material amendments to the land use zoning objectives to zone additional land for residential use;
- material amendment V1-17, a ban on the sale of residential developments to commercial institutional investment bodies;
- commercial institutional investment bodies;
- material amendment V1-31, providing for a nursing home / residential care facility for the elderly outside of a defined settlement boundary in Newcastle; and
- material amendment V1-21, amends the rural housing need criteria under CPO 6.41 of the Plan to include applicants who provide care services to family members and those working in healthcare provision locally.

The Office made a submission on 25th May 2022 on the material alterations to the draft Plan containing seven (7) recommendations. The submission also noted the decision of the planning authority not to comply with certain recommendations. The Office recommendations at MA stage included:

- MA Recommendation 3 – Material Zoning Amendments, relating to residential land use zoning in Kilpeddar–Willowgrove, Johnstown, Ashford, Carnew, and Tinahely.
- MA Recommendation 4 – Development Management, relating to the sale of residential development to institutional investors.
- MA Recommendation 5 –Nursing home (Newcastle).
- MA Recommendation 6 – Rural Housing Criteria.



The elected members of Wicklow County Council resolved to make the Wicklow County Development Plan 2022 – 2028 at a Council Meeting on 12th September 2022. Subsequently, you, as Chief Executive sent a notice letter under section 31AM(6) of the Act (September 2022) to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with.

As a consequence of the above, it is my opinion that the Development Plan, as made by Wicklow County Council, fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, which is a breach of the requirements of the Act.

SUMMARY OF ISSUES

Material Zoning Amendments – OPR MA Recommendation 3

MA Recommendation 3 of the Office's submission to the material alterations to the draft Plan required the planning authority to omit a total of four zoning amendments and to make minor modifications to a further four zoning amendments from the draft Plan to manage growth in these respective settlements. The aggregate area relating to the respective zoning amendments amounted to approximately 26 ha. MA Recommendation 3 – Material Zoning Amendments stated the following:

Having regard to national and regional policy objectives NPO 3c and NPO 18a, the Development Plans, Guidelines for Planning Authorities (2007) and Development Plans, Guidelines for Planning Authorities - Draft for Consultation (August 2021), and section 10(2)(n) of the Planning and Development Act 2000, as amended, the Office considers that the following settlement boundary extensions and residential zonings proposed under the material amendments are inconsistent with the core strategy and/or contrary to the implementation of compact growth, sequential zoning and the provision of a sustainable settlement and transport strategy.



(i) the planning authority is therefore required to make the Plan without the following material amendments:

- . Amendment V1–11(a) (Kilpeddar – Willowgrove)*
- . Amendment V1–13 (Johnstown)*
- . Amendment V2–99 (Ashford)*
- . Amendment V2–100 (Ashford)*

(ii) the planning authority is required to include a minor modification as necessary to the lands identified in the following material amendments to clearly indicate that growth in these settlements will be managed to ensure future development is consistent with the plans objectives in relation to these Level 5 settlements and the core strategy.

- . Amendment V2–102 (Carnew)*
- . Amendment V2–103 (Carnew)*
- . Amendment V2–108 (Tinahely)*
- . Amendment V2–109 (Tinahely)*

The listed amendments are considered to be inconsistent with national and regional policy in respect of compact growth (NPO 3c and RPO 3) and/or with sequential residential zoning under the Minister’s Guidelines, the implementation of the core strategy, the proportionate growth of settlements (NPO 18a), and the provision of a sustainable settlement and transport strategy in accordance with section 10(2n) of the Act.

The planning authority did not comply with MA Recommendation 3 and all eight (8) material amendments were adopted as part of the Plan. In relation to the following zoning amendments listed, the CE’s recommendation was to accept the recommendations of the Office and to make the Plan without the zoning amendments.

(i) Amendment V1 – 11(a) (Kilpeddar – Willowgrove)

(ii) Amendment V1 – 13 (Johnstown)



(iii) Amendment V2 – 99 (Ashford)

(iv) Amendment V2 – 103 (Carnew)

The elected members voted to make the Plan contrary to your recommendation and the recommendation of the Office in respect of these remaining zoning amendments. The section 31AM(6) notice detailed the reasons given by the elected members which the Office has concluded were either not relevant or not grounded in evidence. Furthermore, the reasons did not address the substantive issue in the recommendation concerning each amendment in respect of:

- the peripheral location of the proposed zoning and
- inconsistency with national and regional policy in respect of compact growth (NPO 3c and RPO 3.2 of the RSES),
- the core strategy of the adopted plan, and
- the provision of a sustainable settlement and transport strategy in accordance with section 10(2)(n) of the Act.

Aughrim - R2.5 – New Residential (Low Density) and AUG 4– OPR Recommendation 6

Recommendation 6 of the Office’s submission to the draft Plan required the planning authority to make certain changes to residential zoning in Baltinglass, Aughrim, and Dunlavin, and to the ‘Tertiary Development Area’ in Roundwood. Recommendation 6 – Residential Land Zoning (Miscellaneous) stated the following:

Having regard to national policy objectives NPO 3c and NPO 72 (a, b & c) which support compact growth and sequential development, the requirement under the Development Plans, Guidelines for Planning Authorities 2007 that a sequential approach to the zoning of lands is applied, the guiding principles for the integration of land use and transport in the Regional Spatial and Economic Strategy for the Eastern and Midland Region, and the Wicklow Settlement Hierarchy at table 3.5 and settlement housing targets in table 3.8 of the draft



Plan, the planning authority is required to make the following changes to the settlement plans contained in the draft Plan:

- i. delete the RE – Existing Residential zoning south of Allen Dale Drive in Baltinglass referred to in table 8.3 of the Strategic Environmental Assessment (page 114) and amend the settlement boundary accordingly as this change would lead to further ribbon development contrary to the Sustainable Rural Housing Guidelines for Planning Authorities 2005;*
- ii. delete the R2.5 – New Residential (Low Density), Aug 3 and Aug 4 zoning objectives in Aughrim (referred to in table 8.3 of the SEA) and make corresponding changes to the written statement as these changes would undermine objectives to consolidate the settlement such as Specific Local Objectives SLO 1 and SLO 2 and AUG 9 (to resist significant new development on the south side of the R747);*
- iii. review the land use zoning strategy for Dunlavin and delete NR – New Residential lands that are not sequentially favourable and not required to satisfy its housing target. The proposed residential changes referred to in table 8.3 of the SEA (page 114) would undermine the approach to retain sequentially preferable lands as Strategic Land Bank; and*
- iv. delete the Tertiary Development Area zoning (RD 4) in Roundwood which encroaches on the 200 m buffer from the reservoir and adjoins a proposed Natural Heritage Area and amend the settlement boundary accordingly. The proposed change is contrary to the principles of compact growth and sequential development.*

With the exception of the land use zoning strategy for Dunlavin, your report recommended to the elected members that Recommendation 6 be complied with. The section 12(5)(aa) notice detailed the reasons given by the elected members. The planning authority did not comply with Recommendation 6 and all of the subject zoning objectives were adopted as part of the Plan. In relation to Dunlavin, the Office has accepted the justification provided for retaining the proposed zonings in Dunlavin as outlined in Section 3 of your report (December 2021).



In relation to Baltinglass, the land was previously zoned and is serviced. As stated above, the Office has had regard to the provisions of the Development Plan Guidelines which were published subsequent to the draft Plan, and considers that these changes would not unduly impact on the compact and sequential growth of the settlement.

In relation to Roundwood, while the Office's recommendation has not been complied with, the Office has considered there is insufficient basis in national or regional policy to support a recommendation to my office.

In relation to Aughrim the Office has assessed the three (3) relevant residential zoning objectives ('R2.5 – New Residential Low Density'; 'Aug 3' and 'Aug 4'), and 19 has considered the reasons provided by the elected members for rejecting your recommendation.

The 'R2.5 – New Residential Low Density' lands are located on elevated land to the northwest of the settlement. The 'Aug 4' lands extend the linear development along the R747 at the eastern end of the village and are partially outside of the CSO boundary. The Office does not therefore consider that there is an evidence-based justification to support the need for further residential zoned land to provide for the level of growth set out in the Core Strategy for Aughrim over the plan period. Further, the Office also notes the significant infrastructure constraints in Aughrim. Section 3.7 of Volume 2, Part 2, Small Town Plans of the Wicklow County Development Plan, 2021 – 2027 states that a wastewater treatment plant upgrade is needed for the town. For this reason, the Development Plan (Section 3.7 of Volume 2, Part 2) states that no additional development shall be permitted unless there is adequate capacity in the wastewater treatment plant.

The tiered approach to zoning based on infrastructure capacity is required under NPO72, and the Development Plans Guidelines, to which the planning authority is required to have regard, require that a sequential approach is followed when zoning lands, whereby the most spatially centrally located development sites in settlements are prioritised for new development first, with more spatially peripherally located development sites being zoned subsequently.

The reasons provided by the elected members in support of the zoning objectives do not address the substantive issue in the recommendation concerning the peripheral location of lands and



inconsistency with NPO 3c and RPO 3.2 in relation to compact growth (Aug 4), NPO 72 in relation to the tiered approach to zoning and infrastructure constraints in Aughrim, the core strategy of the development plan, and does not have regard to the sequential approach to development in the development Plan Guidelines

Nursing Home Objective– OPR MA Recommendation 5

MA Recommendation 5 of the Office’s submission to the material alterations to the draft Plan required the planning authority to omit Amendment V1 – 31 to provide for a new nursing home / residential care facility for the elderly at a location shown on Map 7.01. The material amendment zones lands adjacent to the Druids Glen Hotel and Golf Resort for a nursing home use. The lands are removed from any town or village, are not serviced by public transport. MA Recommendation 5 – stated the following:

Having regard to section 6.2.52 of the Development Plans, Guidelines for Planning Authorities - Draft for Consultation (2021), including SPPR DPG 7 and to the requirements to implement sequential zonings under the Development Plans, Guidelines for Planning Authorities (2007) and to the implementation of objectives to promote sustainable settlement and transport strategies under section 10(2)(n) of the Act.

The planning authority is required to make the Plan without the following amendment:

Amendment V1 – 31 To provide for a new nursing home / residential care facility for the elderly at location shown on Map 7.01 (Kilmullen, Newcastle (c. 2 ha))

Your report on the Proposed Material Amendments states the following:

‘The Draft Plan does not provide for zoning of rural areas outside of settlements for nursing homes / retirement villages. The Draft Plan does however set out a number of detailed objectives with regard to such developments, which provides for example that consideration may be given to nursing homes in rural locations where the certain criteria are fulfilled’.



In respect of this amendment, the elected members provided reasons in the notice letter for rejecting your recommendation to omit zoning amendment for nursing home / residential care facility. These reasons were based on the fact that the land was previously zoned and originally part of the Druid's Glen resort therefore the land is not isolated. However, the reasons given do not provide an adequate evidence-based justification to support the Nursing Home zoning objective in a location outside of any designated settlement which is not consistent the provisions of the adopted Plan, specifically CPO 6.32.

The subject lands are not located within a town or village and, notwithstanding the private facilities of the Druid's Glen complex, are not well served by the necessary infrastructure and amenities as set out in CPD 6.32 of the Development Plan. Further, the lack of opportunities for sustainable transport (public transport, walking, cycling) is not consistent with the provision of objectives to promote sustainable settlement and transportation strategies under section 10(2)(n) of the Act.

Development Management– OPR MA Recommendation 4

Under Section 2.1 (Development Management Standards and Guidelines) of their submission to the Material Alterations to the Draft Wicklow County Development Plan 2022-2028, the Office advised that they were *'concerned with Amendment V1 – 17, to the draft Plan, which provides a policy objective (policy CPO 6.X) prohibiting the sale of residential units to commercial institutional investment bodies. The proposed policy objective has no statutory national or regional policy framework support, would conflict with Regulation of Commercial Institutional Investment in Housing Guidelines (2021), and create internal inconsistencies in the development plan resulting in an unsound basis for decision making by your authority in its statutory development management function.'*

Your authority was then recommended at the Material Alterations stage not to make the Development Plan with MA V1-17 by way of OPR MA Recommendation 4. For clarity this recommendation is outlined below:



‘ Development Management Material Amendment V1-17 proposes that the development plan will prohibit the sale of all residential developments to institutional investors, whether these are for houses, duplex units or apartments. In particular, the “blanket” type effect of the MA V1-17 would be at odds with the targeted approach outlined in the Minister’s guidelines. Therefore, having regard to the aforementioned statutory Ministerial planning guidelines on Regulation of Commercial Institutional Investment in Housing Guidelines (2021) published under Section 28 of the Planning Act, the planning authority is required to make the Plan without material amendment V1 – 17.’

I note that OPR MA Recommendation 4 was not subsequently included in the Section 31AM(8) notice letter dated 7th October 2022. However, I do wish to highlight that while this recommendation has not formed part of the draft Direction attached, Wicklow County Council must be satisfied that legally, the inclusion of CPO 6.X is not *ultra vires*. In that regard, it would be prudent for the Council to seek a legal opinion in relation to this matter to ensure that the development plan for Wicklow can be finalised and thereafter, implemented on a sound legal basis, pursuant to Section 132(1) of the Local Government Act 2001 (as amended). I request that I be kept informed on this matter either as an update in your report on the Draft Direction or, alternatively by means of separate correspondence that shall not post-date the submission of your report to the elected members and the OPR pursuant to Section 31AM (8) of the Act.

Opinion

It is my opinion that certain elements of the Development Plan as made are inconsistent with national and regional policy objectives specified in the NPF and the RSES for the Eastern and Midland Regional Assembly.

The factors taken into account in forming this opinion are as follows:

- I. National Policy Objective NPO3(c), NPO 18(a) and NPO 72(c), and Regional Policy Objective RPO 3.2, which state:



National Policy Objective 3(c)

Deliver at least 30% of all homes that are targets in settlements other than the five Cities and the suburbs, within existing built-up footprints.

National Policy Objective 18 (a)

Support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

National Policy Objective 72(c)

When considering zoning of land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development.

Regional Policy Objective 3.2

Local authorities, in their core strategies shall set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.

II. The Development Plans, Guidelines for Planning Authorities (2022), which state:

Section 6.2.3 - Sequential Approach to Zoning for Residential Development

In undertaking the zoning function for new residential development at individual settlement scale, planning authorities are required to adopt a sequential approach which reflects the compact growth, utilisation of existing infrastructure and town regeneration national policy objectives of the NPF, further developing the Tiered Approach. It is a policy and objective of these Guidelines that planning authorities adopt a sequential approach when zoning lands for development, whereby the most spatially centrally located



development sites in settlements are prioritised for new development first, with more spatially peripherally located development sites being zoned subsequently.

- III. The Core Strategy Table in the adopted Development Plan.
- IV. The Chief Executive's reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.
- V. The relevant requirements of section 10, section 12(18) and section 28 of the Act.
- VI. Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.
- VII. The Office's statutory obligations under the Act.
- VIII. The policy objectives in the adopted Wicklow County Development Plan.
- IX. The CE reports on Draft Plan Consultation and material alterations to the draft Development Plan.
- X. The relevant requirements of section 10, section 12(11), section 12(18) and section 28 of the Act.
- XI. The Minister's statutory obligations under the Act.

DRAFT DIRECTION

Accordingly, having considered the recommendation of the Office, I am issuing a draft Direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Wicklow County Council with regard to the Wicklow County Development Plan 2022 – 2028.



The Planning Authority is hereby directed to take the following steps within the Development Plan as set out in the draft Direction to the planning authority accompanying this notice:

- a)** Reinstate the following settlement boundaries and zoning amendments to that of the draft Plan:
- (i) Amendment V1 – 11(a) (Kilpeddar – Willowgrove), i.e. the settlement boundary reverts to the draft Plan.
 - (ii) (Amendment V1 – 13 (Johnstown) i.e. the settlement boundary reverts to the draft Plan.
 - (iii) Amendment V2 – 99 (Ashford) i.e. the settlement boundary reverts to the draft Plan and the subject land reverts to unzoned from RN- New Residential.
 - (iv) Amendment V2 – 103 (Carnew) i.e. the settlement boundary reverts the draft Plan and the subject land reverts to unzoned from RN- New Residential and OS1 Open Space.
- b)** Delete the following zoning objectives from the settlement zoning map for Aughrim:
- (i) R2.5 – New Residential (Low Density),
 - (ii) AUG 4
- c)** Delete both Objective CPO7.xx inserted under Amendment V1-31 and associated Map 7.01:
To provide for a new nursing home/ residential care facility for the elderly at location shown on Map 7.01
- *Kilmullen, Newcastle (c.2ha)*

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the Wicklow County Development Plan 2022 – 2028 Plan referred to in this notice shall be taken not to have come into effect, been made or amended.



NEXT STEPS - PROCEDURAL REQUIREMENTS

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive, under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft Direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft Direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

The report of the Chief Executive must:-

- (a) summarise the views of any person who made submissions or observations to the planning authority;
- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- (c) summarise the views of and recommendations (if any) made by the regional assembly;
- (d) make recommendations in relation to the best manner in which to give effect to the draft Direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.



The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final direction.

Where the Office is of the opinion that a material amendment to the Draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Killian Harrington, Planning Adviser at Killian.Harrington@housing.gov.ie.

Yours sincerely,

Peter Burke, T.D.,

Minister for Local Government and Planning

Copied to:

- Cathaoirleach, Wicklow County Council, County Buildings, Whitegates, Wicklow Town, County Wicklow, A67 FW96
- Mr. Jim Conway, Director, Eastern and Midland Regional Assembly, 3rd Floor North, Ballymun Civic Centre, Main Street, Ballymun, Dublin 9, DO9 C8P5.
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.